# CONSUMER COMPLAINTS AND UNFAIR TRADE PRACTICES: AN EMPIRICAL STUDY OF ONTARIO'S *BUSINESS PRACTICES ACT**

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## *I. Introduction*

Over the past two decades various jurisdictions in Canada, the United States, and elsewhere have adopted legislation intended to remedy unfair trade practices in the marketplace. Yet, we know very little about the impact of such laws. Do they have an effect on business practices? If business engages in unfair trade practices, is it effectively policed by the regulatory agencies in charge of administering the legislation? Do consumers obtain remedies for their grievances and are they satisfied with the result?

Attempts to explore legal impact through textual analyses and anecdotal observations yield relatively little information because impact must be assessed with respect to behavioral patterns and institutional changes that occur not only at the public, observable level but also at the level of less visible, day to day operations. Thus, with respect to unfair trade practices legislation, it is important to determine what kinds of unfair practices actually exist in the marketplace, to ascertain how consumers respond to them, to explore the informal bureaucratic as well as the formal legal response of regulatory agencies administering the legislation, to discover if consumers obtain relief and how much, and to evaluate the responses of business to the legislation.

As a preliminary step toward understanding some of these questions we undertook a study of complaints and complaint processing under Ontario's *Business Practices Act.* We interviewed officials of the Ministry of Consumer and Commercial Relations regarding their operating philosophy. We next undertook a detailed examination of almost 1000 complaints recorded in the Ministry files by conducting a mail survey of both the complainants and subjects involved in these cases. The surveys were followed by a number of detailed telephone interviews. The results paint an interesting, though incomplete,picture of unfair trade practices and their resolution under the *Business Practices Act.*

### *A. The Ontario Business Practices Act*

The *Business Practices Act*[1] prohibits any person from engaging in an unfair practice,[2] and deems certain activities to be unfair practices.[3] All of the deemed unfair practices are "consumer representations", that is, representations made before a contract is agreed upon and which are formally defined as:[4]

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1. R.S.O. 1980, c. 55.
2. Section 3.
3. Section 2.
4. Section 1(c).

"a representation, statement, offer, request or proposal, (i) made respecting or with a view to the supplying of goods or services, or both, to a consumer, or
(ii) made for the purpose of or with a view to receiving consideration for goods or services, or both, supplied or purporting to have been supplied to a consumer".

The deemed unfair practices are "consumer representations" which are "false, misleading or deceptive" and/or "unconscionable".[5]

If a seller or supplier engages in an unfair practice which induces a consumer to enter into an agreement for the purchase of goods or services, the consumer may rescind the agreement within six months, and in some cases claim damages as well.[6] If there has been an unconscionable consumer representation in the sense provided for in the Act,[7] a court may award exemplary or punitive damages.[8] Moreover, these rights apply notwithstanding an agreement or waiver to the contrary.[9]

The legislation also provides for various administrative powers which the Ontario Ministry of Consumer and Commercial Relations may use to deal with persons engaging in unfair practices: These include:

— an order to cease the unfair practice,[10]

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5. Section 2 provides that the following are deemed to be unfair practices:
(a) a false, misleading or deceptive consumer representation including, but without limiting the generality of the foregoing,
(i) a representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or quantities they do not have,
(ii) a representation that the person who is to supply the goods or services has sponsorship, approval, status, affiliation or connection he does not have,
(iii) a representation that the goods are of a particular standard, quality, grade, style or model, if they are not,
(iv) a representation that the goods are new, or unused, if they are not or are reconditioned or reclaimed, provided that the reasonable use of goods to enable the seller to service, prepare, test and deliver the goods for the purpose of sale shall not be deemed to make the goods used for the purposes of this subclause,
(v) a representation that the goods have been used to an extent that is materially different from the fact,
(vi) a representation that the goods or services are available for a reason that does not exist,
(vii) a representation that the goods or services have been supplied in accordance with a previous representation, if they have not,
(viii) a representation that the goods or services or any part thereof are available to the consumer when the person making the representation knows or ought to know they will not be supplied,
(ix) a representation that a service, part, replacement or repair is needed, if it is not,
(x) a representation that a specific price advantage exists, if it does not,
(xi) a representation that misrepresents the authority of a salesman, representative, employee or agent to negotiate the final terms of the proposed transaction,
(xii) a representation that the proposed transaction involves or does not involve rights, remedies or obligations if the representation is false or misleading,
(xiii) a representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use of failure deceives or tends to deceive,
(xiv) a representation that misrepresents the purpose or intent of any solicitation of or any communication with a consumer;
(b) an unconscionable consumer representation made in respect of a particular transaction and in determining whether or not a consumer representation is unconscionable there may be taken into account that the person making the representation or his employer or principal knows or ought to know,
(i) that the consumer is not reasonably able to protect his interests because of his physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factors,
(ii) that the price grossly exceeds the price at which similar goods or services are readily available to like consumers,
(iii) that the consumer is unable to receive a substantial benefit from the subject-matter of the consumer representation,
(iv) that there is no reasonable probability of payment of the obligation in full by the consumer,
(v) that the proposed transaction is excessively one-sided in favour of someone other than the consumer,
(vi) that the terms or conditions of the proposed transaction are so adverse to the consumer as to be inequitable,
(vii) that he is making a misleading statement of opinion on which the consumer is likely to rely to his detriment,
(viii) that he is subjecting the consumer to undue pressure to enter into the transaction.
6. Section 4.
7. Section 2(b).
8. Section 4(2).
9. Section 4(8).
10. Section 6.

— an order for immediate compliance,[11]
— entry into an assurance of voluntary compliance,[12]
— investigations by the Minister or Director,[13] and
— an order to refrain from dealing with assets.[14]

## *B. History of the Legislation*

The *Business Practices Act* was enacted in 1974,[14a] and follows in the line of earlier legislation in the United States and elsewhere. In the United States, unfair practices legislation began with the Federal Trade Commission Act and was followed by state legislation modelled after the FTC Act or other forms.[15] Thus, the Business Practices Act was not a new departure. However, there was, and still is, virtually no empirical evidence concerning the impact of this earlier legislation on the marketplace.[16]

The story begins in the late 1960s when Ontario had the basic legislation of the *Consumer Protection Act*,[17] and a number of other pieces of legislation regulating various industries.[18] The primary regulatory technique was registration. In order to be licenced to carry on certain businesses, applicants had to meet a basic standard which would help to ensure ethical practice. For example, door-to-door sellers had to be registered under the *Consumer Protection Act*.[19] And, if the seller engaged in unethical activity, there was a possibility of deregistration.[20] However, it was found that numerous consumer complaints, involving conduct which bordered on fraud, on which the police would not (or could not) act, could not be handled effectively under the existing consumer legislation. There was a clear sense that more flexibility was required to deal with this type of business practice. At the same time, there was increasing pressure from some industry groups for regulation of the "bad actors" in the industry. Following a meeting between certain officials of the Ministry and those

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11. Section 7.
12. Section 9.
13. Section 10 and 11.
14. Section 12.

14a. The history of the development of the Ontario Act cannot be documented fully. In the course of the preparation of this paper, we have met with those persons intimately involved in the process, and what is written here is their recollection. Apparently, background papers and memoranda are not available.

15. Much has been written on these developments. See, in particular, Kinter, *A Primer on the Law of Deceptive Practices: A Guide for Business* (2nd ed., 1978).
16. One important exception to this statement is the work of Susan Silbey. See Silbey, "The consequences of responsive regulation" in Hawkins and Thomas (eds.), *Enforcing Regulation*. (Kluwer-Nijhoff Publishing, 1984); Silbey, "Case processing: Consumer protection in an attorney general's office" (1981), 15 *Law & Society Review* 881.
17. Now R.S.O. 1980, c. 87.
18. For example, one area covered now by the *Business Practices Act* is the sale of used cars. In the late 1960s, this market would have been regulated largely through the registration provisions of *The Used Car Dealers Act*,S.O. 1968-69, c. 136, now transformed into the *Motor Vehicle Dealers Act*, R.S.O. 1980, c. 299.
19. Section 5(1) provides:
    An applicant is entitled to registration or renewal of registration by the Registrar except where,
    (a) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business, or
    (b) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty; or
    (c) the applicant is a corporation and,
    (i) having regard to its financial position it cannot reasonably be expected to be financially responsible in the conduct of its business, or
    (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law with integrity and honesty; or
    (d) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations.
20. Section 6(2) provides:
    Subject to Section 7, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 5 if he were an applicant, or where the registrant is in breach of a term or condition of the registration.
    Section 7 sets out the procedure for revocation.

in the office of the Attorney-General of the state of New York, whose legislation provided greater flexibility, a decision was taken to introduce unfair practices legislation. It was intended that such legislation would offer a range of administrative techniques beyond the registration systems in force at the time in Ontario.

Matters stood in suspension until the early 1970s, when Professor W. Neilson was commissioned to study the legislation in the United States and elsewhere, and to make recommendations. In this in-house study, the author did a comparative analysis of the existing law and made a series of recommendations. Two points are significant about this study — firstly, no empirical analysis was done to attempt to evaluate the effectiveness of the existing Ontario legislation and, secondly, the recommendations were not adopted.

From this point on, all work on the legislation was done within the Ministry. At the same time, British Columbia and Alberta were planning to enact similar legislation. While the concept of unfair practices was shared, there were considerable differences of opinion on the administrative powers that ought to be provided to deal with them. Ontario was concerned about including the concept of unconscionability in order to deal with situations where the representations were truthful, but the seller took advantage of the buyer. Elsewhere, there was concern with a broader range of business activities than was thought desirable in Ontario. For example, the real estate market and business opportunities were of concern in the west. Moreover, British Columbia was interested in developing a much broader range of possibilities for government intervention.[21]

Submissions from outside agencies assisted the Ministry in the form and drafting of the legislation. In particular, the Canadian Manufacturers Association expressed concern about the generality of the proposed legislation, and the potential for broad administrative intervention in the marketplace.

Throughout the entire development of the legislation, no serious thought was given to any study of the real impact of either the existing legislation elsewhere, or of the proposed legislation. The approach taken was to look at the problems coming through the Ministry's door, to examine the legislation elsewhere that was used to deal with similar problems, and to make an intuitive guess at what might work in Ontario. Thus was the *Business Practices Act* enacted in 1974.

### *C. Criticism and Controversy*

Almost from its inception the Act has been a subject of controversy. After comparing its statutory content with other legislation, Belobaba described it as one of the weakest pieces of trade practices legislation in North America,[22] as an Act which, with respect to enforcement activity and publicity, did not serve consumers well and which provided only symbolic protection.

Subsequent statistics published by the Ministry *could* be interpreted as supporting such a position. The Ministry reports that it deals with over 5000 complaints each

21. The British Columbia *Trade Practices Act*, R.S.B.C. 1979, c. 406 as amended, includes in its definition of "consumer transaction" the supply of goods and services to an individual which "relate to a business opportunity requiring both expenditure of money or property and personal services by that individual and in which he has not been previously engaged" (section 1(2)). These business opportunities are not covered by the Ontario legislation. As well, pursuant to section 24, the director may institute or assume the conduct of proceedings in court on behalf of a consumer, where it is in the public interest to do so. This provision for a "substitute action" is not found in the Ontario legislation.
22. Belobaba, "Unfair trade practices legislation: Symbolism and substance in consumer protection" (1977), 15 *Osgoode Hall Law Journal* 327.

year.[23] In 1979, for example, the Ministry received 18,600 complaints in all, of which 5000 were said to pertain to the Act. In the year March 1981, there were 19,000 complaints of which 5444 were said to relate to the Act. However, between its enactment in 1974 and June 30, 1983 only 52 formal administrative actions had been taken by the Ministry and reported in the public record.[24] Thus, as disclosed by the public record, of every 1000 complaints made, only about 1 results in some formal action against the business concerned.

Samuels examined this formal administrative action under the legislation.[25] His research revealed that the Ministry places primary reliance on the right of the consumer to get rescission and damages if there has been an unfair practice. It operates on a philosophy of encouraging consumers to engage in self help if there has been an unfair practice. The Ministry confines its formal administrative activity to dealing with practices that either involve serious consequences or that are recurring.

It is, however, not appropriate to judge the effectiveness of the *Business Practices Act* on the basis of the public record. First, if self help works, there is, arguably, no need for formal administrative action. Second, some administrative activity may take place on a more informal level but never be reported in the public record. Third, it is conceivable that, since the Ministry is also responsible for administering other legislation relevant to consumer problems, some other sanctions might be applied against offending businesses in lieu of those sanctions found in the *Business Practices Act.*[26]

One way to examine these issues is to determine what actually occurs when complaints are made. To our knowledge no such examination has taken place in Ontario or elsewhere in Canada.[27] We, therefore, undertook a systematic empirical examination of a sample of complaints to the Ministry. We wanted to determine what the complaints were about, how the Ministry responded to them, and what were the ultimate results of the complaints.

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23. Figures for 1973 to 1979 come from the *Annual Report of the Ministry of Consumer and Commercial Relations* for the years ending March 1978 (at pages 14-15), 1979 (at pages 13-14), and 1980 (at pages 12-13); and from unpublished information provided to us by the Ministry.
24. J.W. Samuels, "Administrative Action under the Ontario Business Practices Act" (1982), 20 *Univ. of West. Ont. L. Rev.* 215. And Lundy, in "The Role of the Director under the Business Practices Act" (unpublished), discusses administrative enforcement of the Act in the period after the Samuels' study, and concludes by suggesting that the Director's investigative powers under section 11 may be unconstitutional because they violate section 8 of The Canadian Charter of Rights.
25. Samuels, *ibid.*
26. Our primary argument is that one cannot judge the effect of the legislation from its language alone. It is critical that empirical analysis be done, to establish whether or not the legislation is working. In Samuels, *id.*, the point is addressed in footnote 13:
"In his article 'Unfair Trade Practices Legislation: Symbolism and Substance in Consumer Protection" (1977), 15 *Osgoode Hall L.J.* 327, Belobaba argues that Ontario's legislation is much inferior to trade practices legislation elsewhere in Canada. Indeed, he concludes "One would hope that no government would seriously run the risk of attracting allegations that its trade practices statute is itself an unfair and deceptive act or practice". We suggest that the Belobaba analysis misses the central point - apart from basically cosmetic differences in the legislation, the only real difference from province to province is the way in which the administration chooses to implement its legislation. This suggestion was reinforced in conversations with administrators in British Columbia and Ontario, where the administrative approach to implementation varies greatly, but no one had any hesitation whatsoever in agreeing that the legislative differences were irrelevant. Belobaba's approach concentrates on textual analysis, when the real impact of the legislation must be judged on other grounds. The Ontario *Act* is potentially more than adequate to deal with any real problems in the marketplace - it is not, and will not, fail anyone (consumer or administrator) who employs the legislation to combat a significant unfair trade practice in the marketplace. There is no empirical evidence (anecdotal or statistically sound) to indicate any problem with the *Business Practices Act* arising from inadequacy of its provisions. The general nature of the notion of unfair trade practices, and the wide powers given to the consumer and administration, combine to provide a very effective range of legal tools".
27. During the course of research for this paper, a comprehensive review was made of the literature on unfair trade practices. The first author has prepared a bibliography of jurisprudence and empirical study in the field as of December 1982. A copy may be had by writing to Professor J.W. Samuels, Faculty of Law, University of Western Ontario, London, Canada, N6A 3K7.

## *II. The Empirical Study*

### *A. Overview*

The study consisted of four parts. We first undertook interviews with Ministry officials to learn their philosophy concerning both the administration of the Act and its operating mechanics. Next, we examined the Ministry's confidential files for a selected sample of 958 complaints. In the third part of the study we conducted a mail survey of both the complainant and the subject of the complaint in each of the 958 cases. Finally, in order to supplement the information obtained for the records and the mail survey, we conducted detailed telephone interviews with a subsample of those persons and businesses who responded to the mail survey.

### *B. Methodology of the Study*

We spoke first at length with the Director responsible for the administration of the *Business Practices Act* (hereinafter referred to as the BPA) and with several officials in two regional offices.

Next, we obtained permission to study the complaint files subject to the condition that we maintain the strict confidentiality of the records. We obtained a sample of complaints that Ministry records classified as BPA cases. That sample included a certain proportion of cases from each of the regional offices, but the sample from the London office was greater so as to provide a large enough pool for the personal interviews conducted in the last part of the study. Within each regional office the cases were randomly selected. Ultimately we obtained 958 files based on complaints made to the Ministry between January 1, 1982 and May 18, 1983.

The files provided a summary of the complaint. They also provided some information on the action taken, including whether the Ministry managed to contact the subject of the complaint and, if so, whether the subject replied. The file also told us how the Ministry responded to the complaint: e.g., that the Ministry took action; that the consumer was advised to take his or her own action; that the Ministry could not help because the subject could not be contacted; or, that the matter was resolved between the parties. The files, however, seldom provided information on whether the complainant actually took action when self help was recommended.

In the next part of the project a questionnaire was mailed to the complainant and subject of the complaint in each of the 958 cases. The questionnaires differed slightly for complainants and subjects but basically asked each respondent for details about what happened in the case, including what actions had been taken and what was the final resolution. Respondents were also asked to rate their satisfaction with the outcome of the complaint and with how the Ministry had handled the case.

In response to the survey, 262 complainants answered the questionnaire completely, 151 replied in part, and 7 responded but could not recall filing a complaint. Of the subjects of complaints, 124 responded completely to the questionnaire. Four subjects could not recall the complaint, 36 said that they had never heard of the complaint,[28] 14 refused to participate, and 51 responded but said further information was needed before they could answer. The remainder of the subjects either did not reply or could not be contacted. After deleting some of the partially answered questionnaires we

28. There are at least a couple of reasons why subjects may not know of a complaint. The complainant may withdraw the complaint before the Ministry gets around to contacting the subject. Second, personal turnovers may mean that the original person who handled the complaint has moved on and the new person is neither aware of this old business nor does he have access to a file.

ended up with an overall working sample of 408 complainants and 130 subjects, response rates of 42.3% and 13.6%, respectively.

In the last stage of the research, telephone interviews were conducted with 68 complainants and 35 subjects from the London region. These respondents had all answered the mail questionnaire and had given the researchers permission to contact them for further questions.

The attrition rates in both the mail and telephone interview surveys, particularly for subjects of complaints, obviously may affect the representativeness of our samples. For example, dissatisifed complainants may have been more or less likely to respond than satisfied complainants. Thus, the samples which we obtained may overrepresent certain kinds of complainants. A similar criticism applies to the subject samples and, consequently, interpretations of the data must be qualified on these grounds. Nevertheless, we do note that the sample of respondents who did answer the survey did not differ with respect to a number of case characteristics from the more representative sample that we obtained from the Ministry records; moreover, the type of cases represented in the survey sample cover a large variety of business transactions.

### *C. Results and Discussion*

*1. Descriptive Data.* The Ministry of Consumer and Commercial Relations has eight regional offices in Ontario: Windsor, London, Hamilton, Toronto, Peterborough, Ottawa, Sudbury, and Thunder Bay. The Ministry is responsible for the administration of a number of pieces of legislation in addition to the *Business Practices Act.*

When a complaint is made the officials in the Ministry classify and record it according to the appropriate legislation. Our interest here, of course, is only with those cases that were classified as falling under the BPA. It is possible that some complaints that could have been classified as falling under that Act were dealt with under some other statute; and, perhaps more importantly, some complaints recorded as related to the BPA may be so coded simply because there was no other convenient way to code them. In short there is some discretion involved in the classification procedures and these may differ from one regional office to another or from one official to another.

Interviews with Ministry officials suggest that each office receives many more phone calls, letters, or personal visits by consumers than are ultimately recorded in the files. The Director of Consumer Advisory Services of the Ministry (personal communication, Feb. 14, 1983) estimates that each year the Consumer Services Bureau of the Ministry receive about 142,000 phone calls and some 1200 walk-in visits. Of these, approximately 1 in 10 results in the opening of a file. Usually the contacts are simply inquiries. In some instances in response to a contact, especially when made by telephone, the Ministry asks for a brief written complaint (or will fill out a complaint form and sent it to the consumer) or suggests a visit to the office by the complainant. If the consumer does not follow up as suggested, or does not return the complaint form, the matter is treated as abandoned and is not classified by the Ministry. If the consumer returns the form, then the Ministry will take action.

There are a number of options available to an official when a complaint is made. He or she may advise the consumer immediately that the complaint does not fall under the BPA. Some alternative action such as seeking a remedy in the Small Claims Court may be recommended. Alternatively, the official may first contact the subject of the complaint, then decide whether to advise the consumer to attempt to rescind the contract or take legal action in Small Claims Court. Finally, the official

may decide to pursue the case further under the powers authorized by the Act. In Ontario, the Ministry places considerable emphasis on self help. The legislation offers the consumer the possibility of recision of the contract and damages. The Ministry makes the consumer familiar with these legal rights through personal contact, through letters in response to a complaint, and by means of a variety of printed material. In large part, the Ministry sees its role as a general watchdog over the marketplace, and a source of information for consumers with particular problems.

*2. The Nature of Complaints.* Both the monetary value and the nature of the financial transaction varied widely. The full amount of the business transaction ranged from $2.00 to $46,936.00. The mean, or average amount of the transaction was $726.00 and the median was $175.00. The complaint, or dispute, however, often involved not the full amount of the transaction but, rather, some part of it. For example, the consumer might be satisfied with one part of the goods or services provided by a seller but complain that one part of the transaction involved an unfair trade practice.[29] When the data are viewed in this way we find that the amount of the complaint ranged from $1.00 to $9,999.00 with a mean of $551.00 and a median of $100.00.

Complaints involved such things as misleading advertising and promotional packages, commercial refunds and exchange policies. They also involved transactions with mail order outlets as well as unsatisfactory or incomplete work conducted by tradesmen. One individual, for example, complained about unprocessed films that were lost during a bankruptcy proceeding and another about the practice of withholding a deposit on a book.

*3. BPA and Non-BPA Complaints and Ministry Response.* The BPA is concerned almost exclusively with improper pre-contractual conduct, that is with "false, misleading or deceptive consumer representations" or "unconscionable consumer representations". It does not deal with simple breach of contract. If a business agrees in good conscience to do something but then fails to do it, a breach of contract is involved but not an "unfair practice". Technically, then, the Act should not be used to deal with breach of contract complaints; such complaints are a matter for private law, not public regulation. However, as we perused the files we became aware that many of the complaints in fact appeared to involve breaches of contract. In consequence, we explored this finding more systematically.

The results were striking. Only 18.6% of the cases classified as BPA cases in the Ministry's records clearly involved the allegation of an unfair practice covered under the Act. In another 27.5% there was insufficient information to say whether or not the matter fell under the Act. However, in the remaining 53.7% of the cases it was clear that an unfair practice, as proscribed by the Act, was *not* involved; the issue was breach of contract.

It is important to examine these complaint types separately. First, with respect to the "true" BPA cases, it is interesting to note the types of unfair practices which occur frequently in the complaints. Only five of the deemed unfair practices appeared in any number. Seventeen cases (10.5%) involved section 2(a)(i) "a representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits, or quantities they do not have". Thirteen cases (8%) involved section 2(a)(iii) "a representation that the goods are of a particular standard, quality, grade, style or model, if they are not". Nine cases (5.6%) involved

29. See Vidmar, "The small claims court: a reconceptualization of disputes and an empirical investigation" (1984), 18 *Law & Society Review* 515, for a more complete discussion of the rationale for making a distinction between the total transaction and the disputed part of the transaction.

section 2(a)(vii) "a representation that the goods or services have been supplied in accordance with a previous representation, if they have not". Thirty cases (18.5%) involved section 2(a)(viii) "a representation that the goods or services or any part thereof are available to the consumer when the person making the representation knows or ought to know they will not be supplied". And thirty-nine cases (24.1%) involved section 2(a)(xiii) "a representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive". None of the other subsections was involved in more than a small handful of complaints. We are unable to confirm that in this respect our sample is fully representative of all complaints filed with the Ministry, but the sample was a large one, and we had a sizeable number of cases that did clearly involve an allegation of an unfair practice under the Act. These findings point to particular trouble spots in the marketplace, which might well merit special administrative attention from the Ministry.

It is, however, the large percentage of non-BPA cases that especially pique our interest. There are several possible reasons for this finding; they are not mutually exclusive of one another. The first is that bureaucratic procedures require the Ministry officials to code each transaction with complainants, and the BPA classification becomes the catch-all category. The officials know that the classifications are technically incorrect but find this a convenient way of dispensing with bureaucratic demands. A second interpretation of these data is that it becomes clear that many of these cases fall outside the Act only after the Ministry official has investigated the claim. The form is filled out to show what was done, but the official concludes that it is not within the Ministry's mandate. A third explanation is that the Ministry acts as an intermediary in breach of contract disputes, interpreting its legislative mandate liberally. Consumers come to the Ministry with problems, and the Ministry officials feel that they must respond. Coding the case as a BPA complaint is a way of justifying intervention. These hypotheses can be explored further by determining what actions Ministry officials took in response to the complaints.

Table 1 reports the data disaggregated by whether we judged the case to be BPA, non-BPA, or unclear. Variable A in Table 1 shows that the Ministry made contact with approximately 80% of the subjects of complaints, regardless of type of case. Most often the contacts were made in the form of a letter, though in about 13% of all cases a telephone contact was made, usually followed by a letter. In only one instance in the study was initial contact made by a personal visit. Variable B reports the explanations for not contacting the subject. In about one-third of cases, regardless of type, the subject was no longer in business or was bankrupt. The "Other" category, accounting for the other two-thirds of non-contact cases, involved a number of reasons: e.g., the subject could not be located; the subject was located out of the province or out of the country; the complaint was withdrawn or resolved before the Ministry could take action; the Ministry official decided that the complaint was totally unfounded or frivolous and did not pursue it any further. Variable C shows that for those cases where contact was made the subject was most likely to reply to the Ministry inquiry in non-BPA cases (82%), next most likely in uncertain cases (81%) and least likely in the clear BPA cases (69%).

An important question involves whether the Ministry responded differently to the complaint, depending on whether it was a clear allegation of an "unfair practice" or not. The file forms require that the responses by the Ministry be recorded in one of five categories: Ministry took action; recommended complainant engage in self help; Ministry cannot help; action dropped by complainant; complainant resolved

Table 1
*Ministry Actions in Response to Complaints: Disaggregated by BPA, non-BPA, and Uncertain Cases*

| Source/Variable | Case Type BPA | Non-BPA | Uncertain |
|---|---|---|---|
| *Ministry Records*: | | | |
| A. Made contact with subject | 79% | 81% | 83% |
| B. Failure to contact reason: | | | |
| (a) Out of business/bankrupt | 34% | 34% | 32% |
| (b) Other | 66% | 66% | 68% |
| | 100% | 100% | 100% |
| C. Subject made reply | 69% | 92% | 81% |
| D. Ministry Response | | | |
| Action | 64% | 44% | 49% |
| Could not help | 32% | 52% | 46% |
| Case dropped or resolved | 4% | 4% | 5% |
| | 100% | 100% | 100% |
| E. Ministry formal actions: Frequency | | | |
| Rescind contract | 6 | 1 | 1 |
| Cease order | 3 | 1 | 2 |
| Compliance order | 5 | 3 | 1 |
| Investigation | 1 | 0 | 0 |
| Total | 15 | 5 | 4 |
| *Complaint Survey*: | | | |
| F. Resolved before Ministry acted | 7% | 1% | 13% |
| G. Ministry contacted business | 96% | 97% | 99% |
| H. Ministry prosecuted business | 1% | 0% | 1% |
| I. (a) Ministry could not locate | 11% | 8% | 9% |
| (b) Ministry recommends: cancel contract | 17% | 10% | 15% |
| (c) Ministry cannot help | 27% | 41% | 35% |
| (d) Ministry says claim unfounded | 5% | 5% | 7% |
| (e) Other form of action | 41% | 36% | 34% |
| | 101% | 100% | 100% |

without Ministry action. However, in examining the records we discovered that "Ministry action" was often only a recommendation that the complainant engage in self help: either to seek rescission of the contract or to sue in Small Claims Court. Consequently we combined the "Ministry action" and "self help" categories. The categories of "action dropped" or "case resolved" were so small in actual numbers that we also combined them together. As the data of Variable D show, the Ministry officials responded differently, depending on whether the complaint was a BPA complaint or not. They were much more likely to indicate some form of Ministry action in clear BPA complaints than in non-BPA and unclear complaints. In short the Ministry was more likely to indicate some form of action if the complaint actually

fell under under the BPA and it was more likely to conclude that it couldn't help if it was not within the ambit of the Act.

The form of the action that was taken deserves closer scrutiny. When we examined the records we discovered that in only a few instances did the action involve administrative responses by the agency itself, as opposed to advising the complainants to seek rescission on their own. The frequencies of these actions are reported as Variable E. Frequencies are highest with true BPA complaints, namely 10 percent of the cases. It is also interesting to note that a few administrative actions were taken in breach of contract cases as well. Another interesting insight from these data is that while active Ministry interventions are at an absolute level infrequent there are still twenty-four of them. Given that our sample was just short of 1000 cases we are led to the conclusion that non-passive activity occurs about 24 times in 1000 cases. Investigatory actions are taking place with greater frequency than the Public Record of formal sanctions would indicate. Apparently only formal sanctions levied in the most serious cases are brought to the attention of the public, and as we noted earlier, these occur in about 1 in 1000 complaints.

The data from the archival records can be supplemented by data obtained from complainants in the mail survey. These are reported as Variables F through I in Table 1. Variable F shows that a number of cases were resolved before the Ministry acted. Variable G shows that about 97% of respondents reported that the Ministry contacted the business, a figure that is higher than the 80% contact rate reported in Ministry files. There are two possible interpretations of this discrepancy: (1) respondents from cases where the Ministry was able to contact the subject were more likely to answer our survey; or (2) respondents tend to believe that the Ministry made contact when they lodged a complaint, even though this was often not true. Variable I describes what the complainants reported about the Ministry response. About 1% believed the Ministry "prosecuted" the business — a fact that was not technically true. Mirroring the Ministry records, complainants in non-BPA cases were more likely to report that the Ministry could not help and were less likely to indicate that it recommended that they attempt to cancel the contract. The "other form of action" category, constituting a sizeable proportion of all cases, involved predominately self help. Indeed, many respondents suggested that this other form was to "not pay" or to seek help in a small claims court.

From both the Ministry records and from complainant responses we can draw the conclusion that the Ministry operates predominantly with a philosophy of self help with regard to complaints about unfair business practices. In the overwhelming majority of cases it simply informs the complainant that he or she has the right to *attempt* to rescind the contract. Rather than engage in serious investigation of complaints against a business the Ministry officials take the subject's reply at face value, decide there is a dispute between the two parties, and suggest that the complainant attempt to rescind the contract or take other actions such as filing a small claims court action. These data, then, confirm what the interviews with the Director responsible for administration of the Act told us. The complaints are treated only as *allegations* of unfair practices. The Ministry's philosophy is that even the most honest business is likely to have an occasional allegation made against it. The Ministry typically tries to maintain a neutral intermediary role and remains passive unless a pattern of complaints against a business develops, at which time it undertakes more serious investigation and action.

We also examined a sample of letters sent to complainants, as these were usually appended to the formal records. Some were more detailed than others regarding the steps that the complainant should take to attempt to rescind the contract if the

complaint involved an allegation of an unfair practice. However, little or nothing was said regarding what to do if this attempt failed, except some letters mentioned that it was possible to file a small claims court action. We will examine the effects of this advice to consumers next.

*4. Complainant Responses to Ministry Advice.* If the Ministry acts primarily on a philosophy of self help, the important question is whether the complainants pursue their problems further or whether they just abandon the dispute. Our data speak to this question. Both complainants and subjects were asked what further resulted from the Ministry advice to seek help. Consider the responses from complainants, reported in the top half of Table 2. Variable I.A shows that complainants responded differently, depending on whether the complaint involved the BPA or not, a difference that is statistically significant.[30] Complainants in clear BPA cases were less likely to take no

Table 2
*Consumer Actions in Response to Ministry Recommendation**

| Source/Variable | Case Type BPA | Non-BPA | Uncertain |
|---|---|---|---|
| *I. Complainants* | | | |
| A.1. Took no further action | 23% | 41% | 30% |
| 2. Attempted to rescind contract | 22% | 7% | 9% |
| 3. Took to small claims court | 4% | 10% | 15% |
| 4. Business refunded or provided extra service | 51% | 41% | 56% |
| | 100% | 99% | 100% |
| B. Successful in rescinding contract | 72% | 36% | 17% |
| C. Successful in small claims court | 33% | 58% | 89% |
| D. Overall Success Rate | 65% | 48% | 78% |
| *II. Subjects* | | | |
| A.1. Took no further action | 22% | 42% | 38% |
| 2. Attempted to rescind contract | 22% | 12% | 26% |
| 3. Took to small claims court | 13% | 17% | 6% |
| 4. Business refunded or provided extra service | 43% | 39% | 30% |
| | 100% | 100% | 100% |
| B. Successful in rescinding contract | 80% | 0% | 34% |
| C. Successful in small claims court | 33% | 50% | 60% |
| D. Overall Success Rate | 70% | 47% | 53% |

* Omitting cases settled beforehand.

30. A Chi-square test of statistical significance showed that the likelihood of the obtained difference occurring by chance was less than 1 in 1000.

action, more likely to attempt to cancel the contract and more likely to induce the business to provide a refund or additional service than complainants in non-BPA cases. Generally speaking, uncertain cases fell in between, except that the complainants were more likely to go to small claims court and slightly more likely to induce concessions from the business than those in BPA cases. Variable I.B indicates the success rate if the consumer attempted to cancel the contract. It shows that the consumers who responded to our survey were successful in obtaining recision in fully 72% of BPA cases, but were successful in only 36% of such attempts in non-BPA cases and 17% of uncertain cases. This result should not be surprising in that complainants in BPA cases are almost by definition more likely to have grounds for cancelling the contract. Variable I.C shows the success rate for those cases that went to court.

One way to determine the overall success of consumer self help attempts is to combine the number of successful contract recisions, the number of successful small claims actions, and the instances where the business provided a refund or additional services to the complainant. This "success" score is presented as Variable I.D. These data show that consumers who complain to the Ministry are ultimately likely to have moderate to good rates of success. Consumers in uncertain cases were the most successful (78%) followed by those in BPA cases; consumers in non-BPA cases were least successful but even they achieved a success rate approaching fifty percent.

The responses of the subjects of complaints are reported in the bottom half of Table 2. The actual percentages are quite different from those of the complainants. Some of this difference might be ascribed to the fact that the response rate of subjects in the study was lower than that of complainants and, thus, through self selection the two samples are not comparable. Some might also be ascribed to the fact that in many instances complainants and subjects might have had different kinds of information available to them. Nevertheless, the interesting thing is that the *patterns* of results from the subjects are roughly comparable to those of complainants. Despite the potential sample differences the similar patterns provide an indication of "convergent validity" that makes us more confident of our conclusions regarding outcomes of complaints.

Overall, then, the data reported in Table 2 show that at an absolute level consumers were likely to engage in self help after interaction with the Ministry. They also achieved moderately high levels of success with their grievances, at least as defined by our "Overall success index".

*5. Complainant and Subject Satisfaction.* Another criterion by which the Ministry's administration of the *Business Practices Act* may be judged is by the satisfaction with the Ministry and the outcome of the complaint. Thus, in our mail survey we asked both complainants and subjects how satisfied they felt about the final outcome of the complaint and about the help provided or action taken by the Ministry. The responses to these questions are reported in Table 3.

Table 3 shows that there were no differences in satisfaction as a function of type of complaint, though there was a slight tendency for complainants with clear BPA cases to be "very satisfied" with the Ministry (48%) more frequently than those with non-BPA (32%) or unclear (33%) cases. Otherwise the distribution of satisfaction ranged from very satisfied to very dissatisfied. Chi-square and Pearson correlation statistical analyses were conducted with other variables to determine if there were any correlations with rates of satisfaction. We found that consumers tended to be satisfied with the Ministry when the records indicated that it had taken some action,

even if, as we noted earlier, that "action" was primarily to recommend that the consumer engage in self help. Consumers tended to be dissatisfied when the Ministry said that it could not help. We had coded the number of individual actions taken by the Ministry (i.e., number of phone calls and letters); frequency of Ministry activity was also positively related to satisfaction. Not surprisingly, satisfaction was also related to our measure of consumer success (see Table 2, Variable D). There was a very strong relationship between success rates of consumers and positive feelings of satisfaction with the Ministry. Complainants' satisfaction with the Ministry was, not surprisingly, positively related to their satisfaction with the outcome of the complaint; that is, if they were satisfied with the outcome they were also satisfied with the way the Ministry handled their complaint.

Table 3
*Satisfaction with Outcome and Satisfaction with Ministry*

| Source/Variable | Case Type BPA | Non-BPA | Uncertain |
|---|---|---|---|
| *Complainants* | | | |
| 1. Satisfaction with Ministry | | | |
| Very Satisfied | 49% | 32% | 33% |
| Satisfied | 11% | 16% | 15% |
| Neither | 2% | 12% | 10% |
| Dissatisfied | 15% | 12% | 15% |
| Very Dissatisfied | 23% | 28% | 28% |
| 2. Satisfaction with Outcome | | | |
| Very Satisfied | 35% | 20% | 27% |
| Satisfied | 13% | 17% | 15% |
| Neither | 7% | 8% | 5% |
| Dissatisfied | 7% | 13% | 15% |
| Very Dissatisfied | 37% | 42% | 40% |
| | 99% | 100% | 102% |
| *Subjects* | | | |
| 1. Satisfaction with Ministry | | | |
| Very Satisfied | 30% | 29% | 21% |
| Satisfied | 19% | 8% | 9% |
| Neither | 44% | 39% | 58% |
| Dissatisfied | 0% | 9% | 0% |
| Very Dissatisfied | 7% | 15% | 12% |
| | 100% | 100% | 100% |
| 2. Satisfaction with Outcome | | | |
| Very Satisfied | 23% | 33% | 17% |
| Satisfied | 12% | 14% | 11% |
| Neither | 42% | 34% | 51% |
| Dissatisfied | 8% | 6% | 6% |
| Very Dissatisfied | 15% | 13% | 14% |
| | 100% | 100% | 99% |

Subject's satisfaction with the Ministry and the outcome of the complaint was also diverse but it is very interesting to note that few businesses showed strongly negative reactions to the Ministry or to the outcome of the complaint. As with complainants there was no relationship of satisfaction with the type of complaint. Interestingly, unlike complainants, there was no relationship between subject satisfaction and the type of action that the Ministry took, nor with whether the business "won or lost" the dispute with the complainant. On the whole businesses were neutral with respect to Ministry action, at least among the subjects who responded to the survey. Satisfaction with outcome and the perception of the way that the Ministry handled the complaint was positively correlated.

### *III. Conclusions and Implications*

There are a number of conclusions that can be drawn from this study of consumer complaints under the Ontario *Business Practices Act.* They provide some insights about complaints, about how the Act is actually being administered, and about the assistance being given to Ontario consumers.

We found that only about 19% of the complaints to the Ministry of Consumer and Commercial Relations and categorized as *Business Practices Act* complaints involved clear allegations of unfair business practices while an additional 27% could not be classified with certainty, at least from the information available to us in the files. The remainder of the cases (54%) involved breaches of contract rather than unfair trade practices to which the Act is directed.

Our search of the records showed that few of the practices deemed to be unfair under the BPA legislation showed up in any number. If the catalogue of unfair practices is intended to be a reflection of problems that need to be remedied, and if our sample is representative, then few of the list of problems may be significant in the marketplace itself. Either businesses are not engaging in certain of these practices or consumers are not complaining when they occur. We did learn that consumers do complain about five kinds of conduct prescribed under the BPA: (a) "that goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or quantities they do not have"; (b) "that the goods are of a particular standard, quality, grade, style or model, if they are not"; (c) "that the goods or services have been supplied in accordance with a previous representation, if they have not"; (d) "that the goods or services or any part thereof are available to the consumer when the person making the representation knows or ought to know they will not be supplied"; and (e) representations "using exaggeration, innuendo, or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive". These data may be useful to administrators to indicate those practices that require special attention.

We also found that the Ministry does stick primarily to its professed role of self help philosophy even with clear BPA complaints. It initially treats complaints of unfair business practices as only allegations and after attempting to contact the business the usual result is to inform the consumer than he or she should seek rescission of the contract. This is not to say that the Ministry plays no role in the case even when it recommends self help. While sometimes their contact with the business leads the official to conclude that there was no unfair practice, in other instances the threat posed by the investigating activity is sufficient to cause a business to rectify an injustice and to deter future behavior of the same sort. In interviews Ministry officials pointed out to us that because they are also responsible for other matters relating to the operation of a business, such as registration or licensing, they have

considerable clout. The perceived potential of the Ministry to cause difficulties is often enough to induce a business to be reasonable. The threat does not have to be explicit; it is readily perceived and understood.

Notwithstanding the self help philosophy, greater investigatory and administrative activity occurred when a complaint (or a pattern of complaints) with potentially serious ramifications was lodged. While such activity was infrequent in absolute terms, it took place much more often than has been disclosed in the public record.

Drawing conclusions about the effectiveness of the Act solely from the public record, as some authors have been inclined to do, is, therefore, not appropriate. It underestimates regulatory activity. Indeed, our interviews with Ministry officials suggest that even the confidential records that we examined may not disclose all of the activity with respect to unfair trade practices. Because the Ministry is responsible for administering other Acts intended to protect consumer interests unfair trade practices may sometimes be dealt with under this other legislation. There are two reasons for this. First, malfeasor businesses often engage in more than one type of prohibited practice. Second, as has been documented many times regulatory agencies have considerable discretionary power in determining what courses of action to take.[31] The end result, however, is that a business engaging in a practice that the Ministry considers to be unfair may have alternative sanctions applied to it and not be treated under the Act. We were unable to determine the extent to which such activity occurs, but we ascertained that it does take place.

The other side of the coin to this last observation is that the Ministry's published statistics claiming that it mediates over 5000 cases each year under the Act is misleading. More than half of these cases, we determined, are breaches of contract that were not intended to be dealt with under the legislation. That is, the cases did not involve pre-contractual representations that were unfair trade practices, but rather involved the failure of the business to fulfill a contract that was entered into fairly. In another quarter or more the applicability of the BPA was unclear. From this perspective the extent of allegations about unfair business practices, as proscribed by the Act, are not so extensive as superficial acceptance of the statistics would suggest.

The finding of a large number of breach of contract complaints in our sample has additional implications. While the data from both the file records and the survey responses indicate that BPA cases are sometimes treated differently than those involving breach of contract, it is clear that Ministry officials frequently intervene in the latter in a mediative or advisory role. Some of the activity is simply a result of the fact that only after the Ministry has contacted the subject business or conducted further investigation does it become clear that the issue is breach of contract rather than an unfair business practice. In other instances, however, Ministry officials assume a mediator role quite intentionally. For example, in one instance that came to our attention, a jewelry store lost a watch that had been left for repair and refused to replace it with a similar product. A Ministry official made two visits to the store, placed several phone calls to both the store and the complainant, wrote two letters, and eventually gave rather detailed advice to the complainant about how to sue in small claims court. This was probably an exceptional case in terms of the sheer quantity of Ministry involvement, but we uncovered other instances where on a reduced scale similar actions took place. This is a role that is wider than was contemplated in the legislation. Section 5(b) of the Act provides that the Director shall

31. See, for example, the classic works by Davis, *Discretionary Justice* (1969) and Skolnick, *Justice without Trial: Law Enforcement in a Democratic Society* (1966).

"receive and act on or mediate complaints *respecting unfair practices"* (emphasis added). Under the *Consumer Protection Bureau Act,*[32] which provides the more general legislative mandate for the Ministry, section 1(2) provides only that the Bureau " . . . (b) receive and investigate complaints of conduct *in contravention* of *legislation* for the protection of consumers . . . " (emphasis added). Thus, the mediative role of the Ministry is circumscribed by the legislation, in one case to complaints "respecting unfair practices" and in the other to conduct "in contravention of legislation". There is no provision for mediation with respect to simple breach of contract.

Why would Ministry officials go beyond their mandate in breach of contract cases? The answer lies in complainant expectations, the role Ministry officers define for themselves, and bureaucratic demands. People with a perceived consumer grievance call the Ministry because it is expected to help; the legal distinctions between unfair business practices and breach of contract are immaterial. Ministry officials respond to these expectations and broaden the scope of their role; rather than saying, "we can't help", they undertake some mediative activity to satisfy expectations of complainants and their own sense of doing their job properly. This additional activity also helps to justify their existence to the public and to the provincial legislature, a response common among bureaucratic organizations. The end result is that, under the umbrella of the BPA, consumer needs other than protection against unfair business practices are being served. Silbey's research on the Consumer Protection Division of the Massachusetts Attorney General's office showed a similar pattern of bureaucratic response.[33] Moreover, while the Massachusetts law was intended to "protect consumers from deceptive and misrepresentative trade practices", perusal of the case examples that she provided suggests that much of the Massachusetts case flow may also involve simple breaches of contract.[34]

Another finding from the research is that despite the Ministry's emphasis on advice and self help rather than active intervention, a majority of complainants got full or partial restitution. Breach of contract complainants were less likely to have success (48%) than BPA (65%) and Uncertain (78%) complainants. This is a remarkable rate when we consider that some complaints may not have been justifiable and in others the subject of the complaint was either bankrupt or could not be found.

Slightly over 50% of complainants were satisfied with the Ministry's actions on their behalf, and slightly over 25% were dissatisfied. Complainants were a little less satisfied with their outcomes. Our follow-up interviews showed some misinformation about what the Ministry did on their behalf. A number of satisfied complainants indicated that the business had been prosecuted or reprimanded in some way, when in fact it had not. On the other hand, a number of dissatisfied complainants thought the Ministry should have taken more forceful action on their behalf even when the records indicated that the subject of the complaint was bankrupt or otherwise out of business or when the complaint involved breach of contract. Sources of satisfaction and dissatisfaction are often complex and not always rational.[35]

We must once again call attention to the fact that there was potentially a self-selection bias in our survey samples of complainants and subjects. Yet, the correspondence between the survey data, the Ministry records, and the interviews with officials give us some optimism about the validity of our various conclusions. We believe we have a reasonable picture of consumer complaints, Ministry reaction, and ultimate outcomes of the complaint process.

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32. R.S.O. 1980, c. 88.
33. See Silbey, *supra* note 16.
34. See Silbey (1981), *supra* note 16, at 856-861.
35. See, for example, Vidmar, "Mediation in a small claims court" (1985), 42 *Journal of Social Issues* 127.

We should also note that in making our various observations about bureaucratic responses we are simply attempting to describe what occurs, not passing judgment upon these responses. While the utilization of sanctions outside the ambit of the BPA, or the involvement in breach of contract complaints, may be seen as technically violating the mandate of the legislation, the actions may also be seen as fulfilling broader political purposes, namely attempting to provide assistance to consumers and, perhaps, businesses. Prescriptive analyses regarding the role that government should play in investigating and regulating business practices with respect to consumer interests are beyond what we hoped to accomplish in this preliminary study.[36]

It is important also to caution that our research does not tell us about the overall extent of unfair trade practices or other consumer problems. This study deals only with the handling of complaints that were made to the Ministry. It does not tell us about people with consumer grievances who did not complain to the Ministry. Some consumers with problems may not have known that there was a potential remedy through consumer legislation. Others may have known but have been cynical about the chances of getting help. Others may have taken their grievances to some other forum such as the Better Business Bureau. In short we do not know what proportion of the total number of consumer problems those 5000 formal complaints to the Ministry each year represent. We know that many more inquiries were made that did not result in formal complaints. Were these persons merely seeking information or were they discouraged from pursuing a perceived grievance? How many consumer problems did not even get that far? Do people fail to contact the Ministry because they have no problems, because they do not know the Ministry exists for this purpose, because they can handle the problem on their own, or because they feel that the Ministry would offer no help even if they asked for it? Our knowledge of this base from which the formal complaints are drawn is rudimentary, though Vidmar has recently undertaken research which begins to map empirically the extent of Canadian consumer problems and what is or is not done about them.[37]

The present study also uncovered very little about the impact of the legislation on business practices. Our small sample of subjects generally indicated that the complaint had little impact on their business practices, though several who strongly denied engaging in unfair practices said that they had learned that they must document their dealings with customers better than in the past. Complaint cases, however, do not tell us about the impact of the law on businesses that were not the subject of complaints. This is a difficult problem to study because one must distinguish between conduct which is in conformity with law because of the law and conduct which conforms to law for other reasons. Some businesses may behave ethically because they are concerned about claims for recision or about legal prosecution, but in all likelihood the vast majority of businesses do not engage in unfair trade practices because it would offend their general sense of morality and ethics and because ultimately it would be bad for business. The *Business Practices Act* may be part of the background forming a more general sense of morality and business ethics, but such indirect effects are very difficult to assess. One way to attempt to study the issue is to compare carefully various jurisdictions which arguably have very different types of consumer protection legislation to see if the number and types of problems, consumer responses

36. The reader is referred to Kinter, *supra* note 15; Silbey, *supra* note 16; and Nader and Todd (Eds.), *The Disputing Process: Law in Ten Societies* (1978).
37. Vidmar, "An empirical map of minor dispute behavior among English Canadians". Paper presented in 1985 at the First meeting of the Canadian Law and Society Association, Montreal.

and actual business practices differ.[38]

While many questions thus remain unanswered, the present research provides an important starting point from which to assess the impact of unfair trade practices legislation. Statutory analysis by itself gives us little insight about legal impact. We must study actual behavior and institutional responses.

38. See, for example, Macaulay, "Non-contractual relations in business: a preliminary study" (1963), 28 *American Sociological Review* 55; or more generally, Friedman, *The Legal System; A Social Science Perspective* (1975).